TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 43

MONTGOMERY BUILDING & CONSTRUCTION TRADES COUNCIL, ET, AL., PETITIONERS,

vs.

LEDBETTER ERECTION COMPANY, INC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

PETITION FOR CERTIORARI FILED APRIL 25, 1952
CERTIORARI GRANTED JUNE 2, 1952

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No.

MONTGOMERY BUILDING & CONSTRUCTION TRADES COUNCIL, ET AL., PETITIONERS,

vs.

LEDBETTER ERECTION COMPANY, INC.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

INDEX

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1952.

—1200

[fol. a]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, STATE OF ALABAMA

LEDBETTER ERECTION COMPANY, INC., Complainant,

vs.

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, ET ALS., Respondents

CERTIFICATE OF APPEAL—January 12, 1951

I, Geo. H. Jones, Jr., as Register of the Circuit Court of Montgomery County, Alabama, In Equity, do hereby certify that an appeal was taken to the Supreme Court of the State of Alabama in the above stated cause on the 10th day of January, 1951, by the Respondents: Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union, Local #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith, and Monroe Henderson, from a decree rendered on the 21st day of December, 1950, and that said appeal is made returnable to the second Monday in March, 1951.

I further certify that Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union, Local #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith and Monroe Henderson, are principals, and Employers' Liability Assurance Corporation, Ltd., is surety, for the costs of said appeal.

Given under my hand and seal of office, this the 12th day of January, 1951.

(S.) Geo. H. Jones, Jr., As Register of the Circuit Court of Montgomery County, Alabama, In Equity.
(Seal.)

[fol. 1] IN CIRCUIT COURT OF MONTGOMERY COUNTY

ORGANIZATION OF COURT

At a regular term of the Circuit Court of Montgomery County, Alabama, In Equity, at which the officers authorized

by law to hold or serve such Court, were serving, the following proceedings were had in the cause styled:

LEDBETTER ERECTION COMPANY

vs.

MONTGOMERY BUILDING & CONSTRUCTION TRADES COUNCIL, ET ALS.

[fol. 2] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

[Title omitted]

BILL OF COMPLAINT—Filed October 20, 1950

To the Honorable Walter B. Jones and Eugene W. Carter, Judges of the Circuit Court of Montgomery County, Alabama, Sitting In Equity:

Now comes Ledbetter Erection Company, Inc., and respectfully shows unto the Court as follows:

1. That it is a corporation organized and existing under the laws of the State of Alabama and having its principal place of business in Birmingham, Alabama; that Montgomery Building and Construction Trades Council is an unincorporated association of representatives of various builders trades unions within the City of Montgomery and surrounding territory; that J. H. McNeese is over the age of twenty-one and a resident of the City and County of Montgomery and is president of the Montgomery Building and Construction Trades Council; that the International Brotherhood of Electrical Workers Union, Local No. 443 is an unincorporated association; that Carpenters and Joiners Local Union #1796 is an unincorporated association having its principal place of business in the City and County of Montgomery, Alabama; that Ross Smith and Monroe Henderson are each over the age of twenty-one and residents of the City and County of Montgomery; that John Doe whose name to complainant is otherwise unknown is over the age

of twenty-one and a resident of the City and County of Montgomery.

2. Complainant avers that it is engaged in the business of the erection of structural steel; that complainant has for more than ten years past operated what is know- as a union shop under a contract with the International Association of Bridge Structural and Ornamental Iron Workers under the terms of which said contract complainant agrees to employ no employees except members of said union and not to sublet any work to any party who employs other than union labor; that complainant has a similar union shop contract with the International Union Operating Engineers.

3. Complainant avers that sometime shortly prior to June 1, 1950, Montgomery Towers, Inc., was formed as a corpora- [fol. 3] tion for the purpose of erecting a multi-story apartment house on a lot on the corner of Court and Clayton Streets in the City of Montgomery, Alabama, and said Montgomery Towers, Inc., entered into a contract with Bear Brothers, Inc., an Alabama corporation, as general contractors under the terms of which said contract Bear Brothers, Inc., agreed to erect said apartment house in accordance with plans and specifications. That on June 1, 1950, complainant entered into a contract with said Bear Brothers, Inc., under the terms of which complainant agreed to erect and rivet all of the structural steel necessary for the erection of said apartment house; that said apartment house being some ten stories in height with steel frame requires the erection of heavy steel girders and columns; that in the performance of said work complainant had and still has seventeen persons employed consisting of fourteen iron workers, 2 foremen and one operating engineer operating the crane necessary for the erection of such steel.

4. Complainant is informed and believes and on such information and belief avers that the employees of Bear Brothers, Inc., are not organized as union labor; that no labor organization has been certified as the representatives of the employees of Bear Brothers, Inc., under the terms of the National Labor Relations Act or the Labor Management Relations Act, commonly known as the Taft-Hartley Act; that there is no existing labor dispute between Bear Brothers, Inc., and its employees and there is no existing labor dispute between the complainant and any of its em-

ployees or the duly certified bargaining agent of such employees.

5. Complainant avers that the International Union of Operating Engineers and the International Association of Bridge Structural and Ornamental Iron Workers are the duly accredited collective bargaining agent for the employees of the complainant and that none of the respondents are the accredited collective bargaining agent of the employees of the complainant and said respondent unions and Montgomery Building Trades Council do not represent the employees of complainant.

6. That the International Brotherhood of Electrical Workers Union, Local #443, the Carpenters and Joiners Local Union #1796 and the Montgomery Building and Construction Trades Council do, not represent employees of Bear Brothers, Inc.

7. The respondents do not seek to represent the complainant's employees and do not seek employment by the complainant for any member of the respondent unions or others and said respondents do not seek to alter or affect the terms or conditions of employment of complainant's [fol. 4] employees.

8. Complainant's employees and the unions which represent them are satisfied with the contract existing between them and complainant, and complainant is not involved in any labor dispute with its employees or with the International Association of Bridge Structural and Ornamental Iron Workers or the International Union of Operating Engineers.

9. That the Respondents Montgomery Building and Construction Trades Council acting through the respondent J. H. McNeese, its President, and acting in concert with the International Brotherhood of Electrical Workers Union, Local #443, and the Carpenters and Joiners Local Union #1796 are seeking to force or require Bear Brothers, Inc. to recognize or bargain with a labor organization as the representative of employees of Bear Brothers, Inc., which said labor organization has not been certified as a representative of such employees as required by the National Labor Relations Act as amended by the Labor Management Relations Act; that to that end, the respondent Montgomery Building and Construction Trades Council and the respond-

ent International Brotherhood of Electrical Workers Union have placed a picket line at or across the entrances to the property upon which such building is being constructed and the respondents Ross Smith, Monroe Henderson, and John Doe are actively engaged in picketing said property.

10. That the union employees of the complainant are not willing to cross said picket line to perform work on said building; that representatives of the collective bargaining agent of complainant's employees, to-wit, the International Association of Bridge Structural and Ornamental Iron Workers attempted to get the respondents to remove said picket line so that complainant's employees could continue to work on said job but the respondents failed or refused to remove the same.

11. That the action of said respondents is a violation of Section 8B(4) of the National Labor Relations Act as amended and amounts to secondary picketing as therein defined and prohibited; that said action of the respondents induces or encourages the employees of this complainant to engage in a concerted refusal to perform services for the object of forcing or requiring another employer to recognize or bargain with the labor organization as the representative of Bear Brothers, Inc., employees, where such labor organization has not been certified as a representative of such employees and to force or to require complainant Ledbetter Erection Company, Inc., to cease doing business with Bear [fol. 5] Brothers, Inc.

12. That since the establishment of said picket line by the respondents none of the employees of the complainant Ledbetter Erection Company, Inc., will cross said picket line and the erection of said structural steel has been stopped; that if said picket line is maintained complainant will suffer irreparable damage for which it will have no adequate remedy at law; that the remedy of an action and damages provided by Section 303 of the Taft-Hartley Act (29 U. S. C. A., Section 187) is inadequate; that the complainant's valuable heavy machinery is being kept idle at complete loss to the complainant and complainant has been notified by its employees that if they are prevented from working on this job by reason of said picket line they will be forced to seek employment elsewhere; that in order to keep complainant's experienced crew of workmen together

it would be necessary for the complainant to pay said employees even though they remained idle for an indeterminate time at a resulting loss to the complainant for which no adequate damages could be assessed or collected; that complainant's employees have notified complainant that unless said picket line is removed on November 20, they will seek employment elsewhere; that in addition thereto it might become necessary for complainant to default in its contract with Bear Brothers, Inc., as a result of which complainant would be subjected to suits for damages for such breach.

13. That said apartment building is being erected under the terms of Section 608 of the National Housing Act under a commitment issued by the Federal Housing Authority certifying that such housing was essential and that there existed in Montgomery a shortage of adequate housing units for rental purposes; that since the erection of said building was begun defense activities at Gunter Field and Maxwell Field have substantially increased; that complainant is informed and believes and on such information and belief avers that the commanding officer of Maxwell Air Force Base, Montgomery, Alabama, has stated publicly that after January 1, 1951, that defense activities at Maxwell Air Force Base will be stepped up to such an extent that said Air Force Base will have a larger personnel than ever before in its history; and before such defense activities were initiated the Chamber of Commerce was asked to ascertain whether the City of Montgomery could absorb 500 additional families and in making said survey the Chamber of Commerce took into consideration the availability of this apartment house under erection which would [fol. 6] supply 124 additional rental units; that if the erection of said apartment house is delayed such rental units will not be available for the use of the members of the armed forces or other defense activities in and around Montgomery and the public interest will be inimically affected.

14. That complainant and its employees are entirely innocent parties and are in no way engaged in any labor dispute among themselves or with anyone else. That complainant's employees are unwilling to cross said picket

line for the reason that if they cross said picket line they might be blackballed and prevented from working on further jobs; that the effect of the continued maintenance of such picket line is therefore to prevent complainant from engaging in business and performing its said contract and also prevents the complainant's employees from engaging in gainful employment in Montgomery to the irreparable injury to both the complainant and its employees.

15. Complainant alleges that there is no connection between complainant and Bear Brothers, Inc., other than the contract under which complainant agreed to erect said structural steel; that there is no connection between complainant and the employees of Bear Brothers, Inc., and complainant has no right to hire or fire or establish hours and working conditions for the employees of Bear Brothers, Inc., and has no control over such employees of Bear Brothers, Inc., that complainant cannot force the employees of Bear Brothers, Inc., to join any union represented by the respondents and cannot force Bear Brothers, Inc., to negotiate with or recognize the respondents or any of them as the accredited or recognized bargaining agent of the employees of Bear Brothers, Inc.; that the respondents well knew of complainant's union shop contract with the duly accredited bargaining representative of complainant's employees and further knew that the complainant's employees would refuse to cross a picket line; that the action of respondent's in unlawfully establishing and maintaining said picket line impairs the contract between the complainant and the International Association of Bridge Structural and Ornamental Iron Workers; that such action of the respondents amounts to an unlawful interference with the complainant's business and its right to perform its said contract with Bear Brothers, Inc.; that such action of the respondents is a combination, conspiracy or arrangement for the purpose of hindering, delaying or preventing complainant from carrying on a lawful business which is in violation of [fol. 7] Section 54, Title 14 of the Code of Alabama of 1940; that such action of the respondents in establishing and maintaining said picket line in violation of the labor management relations act is a violation of Title 14, Section 57 and constitutes the use of unlawful means to prevent the

complainant from engaging in a lawful occupation or business; that such action of the respondents is a violation of the property rights of complainant and unlawfully interferes with the rights of complainant's employees to labor and engage in work of their own choosing.

Premises considered complainant makes said Montgomery Building and Construction Trades Council, J. H. McNeese, International Brotherhood of Electrical Workers Union Local #443, Carpenters and Joiners Union Local #1796, Ross Smith, Monroe Henderson and John Doe parties respondent to this bill of complaint and prays that process issue to them requiring them to plead, answer or demur to this bill of complaint within the time and manner required by law and the rules of this Honorable Court.

Complainant prays that pending a hearing hereof the Court will make and issue a writ of injunction, enjoining said respondents, their agents, servants or employees and all persons acting in concert with them from

(a) Maintaining any picket line at the entrances of said property on the corner of Court and Clayton Streets in the City of Montgomery;

(b) Engaging in any unfair labor practice as defined by the Labor Management Relations Act;

(c) Performing any act seeking to induce or encourage employees of complainant to engage in a concerted refusal to perform any services for the purpose of forcing or requiring Bear Brothers, Inc., to recognize or bargain with a labor organization as a representative of its employees unless such labor organization has been certified as the representative of such employees;

(d) Performing any act seeking to induce or encourage the employees of complainant to engage in a concerted refusal to perform any services with the object of forcing complainant to cease doing business with Bear Brothers, Inc.;

[fol. 8] (e) Picketing in any manner said construction job at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama.

(f) Taking any steps seeking to induce complainant's employees not to work or hindering or interfering with said

employees of complainant or seeking in any way to disrupt the normal and ordinary operations of complainant's business or from unlawfully infringing upon the personal or property rights of complainant or its employees while engaging or seeking to engage in their duties in connection with complainant's business.

And Complainant prays that upon a final hearing hereof the Court will make and enter a decree making said temporary injunction permanent. Complainant further prays that upon a final hearing hereof the Court will make and enter a decree ascertaining and determining the damages sustained by the complainant in its business by reason of such unlawful picketing in violation of Section 303 of the Labor Management Relations Act and will render Judgment in favor of the complainant against said respondents for complainant's said damages.

And if mistaken in the relief above prayed complainant prays for such other further and general relief as to which in equity and good conscience it may be entitled.

(S.) M. L. Gwaltney, Files Crenshaw, Jack Crenshaw, Attorneys for Complainant.

Duly sworn to by S. M. Walker. Jurat omitted in printing.

[fol. 9] [File endorsement omitted]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

JUDGE'S FIAT—November 20, 1950

Upon consideration of the within sworn bill of complaint, it is ordered adjudged and decreed by the Court that the Temporary Writ of Injunction issue as prayed for upon complainant entering into bond in the sum of $500.00 conditioned and payable as required by law and to be approved by the Register.

Done this Nov. 20, 1950.

(S.) Walter B. Jones, Circuit Judge.

IN CIRCUIT COURT OF MONTGOMERY COUNTY

WRIT OF INJUNCTION—November 20, 1950

THE STATE OF ALABAMA,
Montgomery County:

To *Montgomery Building and Construction Trades Council, J. H. McNeese, International Brotherhood of Electrical Workers Union Local #443, Carpenters and Joiners Union Local 1796. Ross Smith, Monroe Henderson and John Doe*

Whereas, one *Ledbetter Erection Company, Inc.*, has exhibited his bill of complaint in equity, in the Circuit Court of Montgomery County, and has obtained from the Honorable *Walter B. Jones* an order for the issuance of an Injunction to enjoin you as hereinafter mentioned; and whereas, the said *Ledbetter Erection Company, Inc.* has, in accordance with said order, entered into bond, with security, in the sum of Five Hundred and no/100 ($500.00) Dollars payable to said respondents and approved by the Register of said Court, and conditioned according to law.

Now, Therefore, you, the said *Montgomery Building and Construction Trades Council, J. H. McNeese, International Brotherhood of Electrical Workers Union Local #443, Carpenters and Joiners Union Local #1796, Ross Smith, Monroe Henderson and John Doe,* are hereby enjoined [fol. 10] from

(a) Maintaining any picket line at the entrances to said property on the corner of Court and Clayton Streets in the City of Montgomery;

(b) Engaging in any unfair labor practices as defined by the Labor Management Relations Act;

(c) Performing any act seeking to induce or encourage employees of complainant to engage in a concerted refusal to perform any services for the purpose of forcing or requiring Bear Brothers, Inc., to recognize or bargain with a labor organization as a representative of its employees unless such labor organization has been certified as the representatives of such employees;

(d) Performing any act seeking to induce or encourage the employees of complainant to engage in a concerted refusal to perform any services with the object of forcing complainant to cease doing business with Bear Brothers, Inc.

(e) Picketing in any manner said construction job at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama.

(f) Taking any steps seeking to induce complainant's employees not to work or hindering or interfering with said employees of complainant or seeking in any way to disrupt the normal and ordinary operations of complainant's business or from unlawfully infringing upon the personal or property rights of complainant or its employees while engaging or seeking to engage in their duties in connection with complainant's business;

And this Injunction you are required to obey under the penalties of the law, until the further order of this Court.

Witness my hand, this 20th day of November, 1950.

(S.) Geo. H. Jones, Jr., Register.

[fol. 11] To the Sheriff of Montgomery County:

You are hereby commanded to execute this writ, and return the same with your endorsement thereon, to this Court, with all convenient speed.

Witness my hand, this 20 day of November, 1950.

(S.) Geo. H. Jones, Jr., Register.

Executed by serving copy of the within—November 21, 1950. J. H. McNeese—Montgomery Building Trades, J. E. Garner—Electrical Workers, Ross Smith, Monroe Henderson—Charlie Wilson—Carpenters and Joiners Union—John Doe (Not Found)—

(S.) G. A. Mosley, Sheriff, Montgomery County;
(S.) Mitchell & Mathis, Deputy Sheriffs.

[fols. 12-13] Injunction Bond for $500.00 approved and filed Nov. 20 1950 omitted in printing.

[fol. 14] IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

[Title omitted]

MOTION TO DISSOLVE INJUNCTION

To the Hon. Walter B. Jones, Judge of the Circuit Court of Montgomery County, Alabama, In Equity Sitting:

Come the respondents, separately and severally, and move to dissolve the injunction in this cause as a whole and dismiss the bill of complaint as a whole and further, separately and severally, move to dissolve said injunction and dismiss the bill as to the following, separate and several, parts thereof, to-wit:

A. That part thereof enjoining respondents from maintaining any picket line at the entrances to said property on the corner of Court and Clayton Streets in the City of Montgomery;

B. That part thereof enjoining respondents from engaging in any unfair labor practice as defined by the Labor-Management Relations Act;

C. That part thereof enjoining respondents from performing any act seeking to induce or encourage employees of complainant to engage in a concerted refusal to perform any services for the purpose of forcing or requiring Bear Brothers, Inc., to recognize or bargain with a labor organization as a representative of its employees unless such labor organization has been certified as the representative of such employees;

D. That part thereof enjoining respondents from performing any act seeking to induce or encourage the employees of complainant to engage in a concerted refusal to perform any service with the object of forcing complainant to cease doing business with Bear Brothers, Inc.;

[fol. 15] E. That part thereof enjoining respondents from picketing in any manner said construction job at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama;

F. That part thereof enjoining respondents from taking steps seeking to induce complainant's employees not to

work or hindering or interfering with said employees of complainant or seeking in any way to disrupt the normal and ordinary operations of complainant's business or from unlawfully infringing upon the personal or property rights of complainant or its employees while engaging or seeking to engage in their duties in connection with complainant's business;

And for grounds of said motion to the said injunction as a whole and to each of the separate and several parts thereof above described, the said respondents, separately and severally, assign as grounds of said motion the following, separately and severally:

1. There is no equity in the bill.

2. There is no equity in said bill for that the remedy at law is full, complete and adequate, if complainant is entitled to any relief in any Court.

3. The acts and things complained of are not illegal under the laws of the State of Alabama.

4. Said bill is not in good faith, but for the purpose of aiding and abetting the Bear Construction Company in their efforts to defeat respondent's organization program.

5. Respondents have violated no legal right of complainant entitling it either to an injunction or an award of damages.

6. For that the same violates the public policy of the United States.

7. It does not appear that any acts done by respondents were done with an intent to injure complainant.

8. The picketing complained of is a primary picket aimed solely at the primary employer.

9. Respondents are entitled to have said injunction dissolved on the averments of the sworn answer.

10. The picketing does not constitute a secondary boycott.

11. Court of Equity is without jurisdiction to enjoin picketing for the purpose of organizing workers.

[Fol. 16] 12. Said bill is not in good faith, but for the purpose of aiding and abetting Bear Brothers, Inc., in their effort to destroy the Unions.

13. Respondents have violated no legal right of complainant entitling it either to an injunction or an award of damages.

14. For that the same violates the Constitution of the United States.

15. For that the same violates the Thirteenth Amendment of the Constitution of the United States.

16. For that the same violates the Fourteenth Amendment of the Constitution of the United States.

17. For that the same denies freedom of press and freedom of speech.

18. For that the same denied the right of peaceful assembly.

19. For that the same violates the public policy of the United States.

20. Said injunction is excessive.

21. The said injunction is not confined to illegal picketing.

22. Said injunction is a blanket injunction banning all picketing.

23. Said injunction bans peaceful, lawful picketing.

24. The same is contrary to the Laws of the State of Alabama.

25. The same is contrary to the Constitution of the State of Alabama.

26. The same is contrary to the public policy of the State of Alabama.

27. If the act complained of in the complaint is a violation of section 8 (b) of the National Labor Relations Act, the complainant has an adequate remedy as provided in Section 10 (a) of the said Act.

[fol. 17] IN CIRCUIT COURT OF MONTGOMERY COUNTY

ANSWER

Come the respondents, separately and severally, without waiving the motion to dissolve but insisting upon the same and, separately and severally, file the following answer to said bill of complaint, answering each paragraph thereof, separately and severally.

1. Respondents do not know whether or not the complainant is a corporation organized and existing under the Laws of the State of Alabama, neither do respondents know

whether its principal place of business is in Birmingham, Alabama, or not;

Respondents admit that Montgomery Building & Construction Trades Council is an unincorporated association of representatives of various building trade unions within the City of Montgomery and surrounding territory; and that J. H. McNeese is over the age of 21 and a resident of the City and County of Montgomery, Alabama, but respondents specifically deny that he is the President of the Montgomery Building & Construction Trades Council; respondents admit that the International Brotherhood of Electrical Workers Union, Local #443, is an unincorporated association; that Carpenters and Joiners Local Union #1796, is an unincorporated association and has its place of business in the City of Montgomery, Alabama; that Ross Smith and Monroe Henderson are each over the age of 21 and residents of the City and County of Montgomery.

2. Respondents do not know anything about the business of the complainant or whether he is under contract with Structural Iron Workers or what his agreement is with his employees, all of said paragraph being of matters best known to the complainant himself. Respondents neither admit nor deny allegations but demand strict proof thereof.

3. Respondents do not know anything about the business of Montgomery Towers, Inc., or when it was formed nor whether it entered into a contract with Bear Brothers, Inc., for the purpose of erecting an apartment house, neither do respondents know whether complainant entered into a contract with said Bear Brothers, Inc., to erect the structural steel necessary for the erection of said apartment house. Respondents do know that Bear Brothers, Inc., has charge of and is erecting an apartment house at the corner of Court and Clayton Streets in the City and County of Montgomery, [fol. 18] Alabama, and that complainant is engaged in erecting the structural steel for said building;

Respondents are not informed as to the other averments of this paragraph and can neither admit nor deny the same.

4. Respondents admit that the employees of Bear Brothers, Inc., are not members of a labor union affiliated with the Montgomery Building & Construction Trades Council and that no labor organization has been certified as the representative of said employees under the terms of the National

Labor Relations Act or Labor-Management Relations Act, commonly known as the Taft-Hartley Act. In fact, the National Labor Relations Board under these acts would have no jurisdiction over said employees.

5. Respondents do not know whether or not International Union of Operating Engineers and the International Association of Bridge, Structural, Ornamental Iron Workers, are the accredited bargaining agents for the employees of the complainant, but respondents admit they are not, if this be material, which they deny; they do allege, however, that the Building Trades Council of Montgomery does have jurisdiction over all union building trades engaged in the building of buildings within the jurisdiction of Montgomery Building Trades Council, that is within Montgomery County, and does act as the collective bargaining agent for all trades affiliated with the present trades council in that county.

6. Respondents say the International Brotherhood of Electrical Workers Union #443, Carpenters and Joiners Local Union #1796, have no members presently engaged as employees of Bear Brothers, Inc., but that the Montgomery Building & Construction Trades Council does represent any union employees engaged in the erection of buildings in Montgomery whether they are working for Bear Brothers, Inc., or someone else.

7. Respondents admit that they do not seek to represent the complainant's employees or to alter or affect the terms or conditions of employment of complainant's employees but do say that building trades unions, while engaged in working within the jurisdiction of the Montgomery Building Trades Council are required to submit to its rules and regulations.

[fol. 19] 8. Respondents say that as far as they know paragraph 8 is true and correct.

9. Respondents say that J. H. McNeese is not the President of the Building & Construction Trades Council, but do admit that the Building & Trades Council through its affiliated memberships which include the Electrical Workers and Carpenters and Joiners did place a picket at the entrance to the apartment building now being erected at the corner of Court and Clayton Streets in the City and County of Montgomery, Alabama, and admit that they have not been

certified as representatives of such employees and that not being engaged in interstate commerce they are not required so to do by the National Labor Relations Act as amended.

10. Respondents specifically deny the allegations of paragraph 10 and say that the picket sign which was carried by the picket stated that Bear Brothers, Inc., was unfair to the Montgomery Building Trades Council. They further say that the employees of complainant continued to work during the time the picket was there up to the day the injunction was issued and the picket was removed on account of the injunction. They also aver that the employees of complainant never asked the respondents to remove the picket line.

11. Respondents specifically deny that the act of maintaining a picket line at this particular building was a violation of Section 8 B (4) of the National Labor Relations Act as amended; further, that the erection of the building is entirely an intrastate job and the National Labor Relations Board would have no jurisdiction over the operation of said job.

12. Respondents deny the allegations in this paragraph and further say that the employees of the complainant did cross the picket line and continued with their work during the time the picket was in existence and respondents deny that the complainant's valuable and heavy machinery was kept in idleness due to any picket line placed on job by the respondents. Respondents have no way of knowing whether the allegations are true or false as to any statements not being made in the presence of respondents, but respondents say such allegations are irrelevant and immaterial to the issues in this case.

[fol. 20] 13. Respondents do not know anything about the arrangements made to raise finances for the building of said apartment house neither do respondents know about the activities of the Chamber of Commerce, nor whether or not there will be any increase in the personnel of officers and men at Maxwell Air Force Base in the near future or whether if so, any of them would want to live in said apartment house if same was finished and ready for occupancy; respondent's further say that paragraph 13 is merely the expression of an opinion and an argument by the complainant which does not need an answer, because irrelevant and immaterial to the issues in this case.

14. Respondents admit that complainant and its employees are third parties as far as the dispute between the Building Construction & Trades Council and Bear Brothers, Inc., are concerned, but deny that complainant is an entirely innocent party and also deny that complainant's employees are unwilling to cross said picket line and say that said employees have on many occasions crossed the said picket line and worked on the job.

15. Respondents understand and believe that complainant is subcontracting the erection of the structural steel on said job from Bear Brothers, Inc., but as to any connection between the complainant and the employees of Bear Brothers, Inc., respondents have no way of knowing anything about same and do not know whether the complainant has the right to hire or fire or establish hours and working conditions for the employees of Bear Brothers, Inc., nor do respondents know anything about what control, if any, the complainant has over the employees of Bear Brothers, Inc. Respondents admit that they were of the opinion that complainant had a union shop contract with complainant's employees, but not knowing the wording of the contract did not know or had no way of knowing whether or not the employees would refuse to cross a picket line. Respondents deny that they have committed any unlawful act in establishing the said picket line and deny that they have in any way interferred with the complainant's business and its right to perform its said contract with Bear Brothers, Inc., and that [fol. 21] in establishing the picket line expressing the fact that Bear Brothers, Inc., was unfair to organized labor was a perfectly legal act and even if it were shown that complainant's employees had refused to cross the picket lines the complainant, being a third party, would not be in a position to complain about a fight between the Building & Construction Trades Council and Bear Brothers, Inc.

(S.) J. H. McNeese, B. A.; (S.) Chas. Wilson, Carp. Local 1796; (S.) J. Earl Garner, L. U. 443 I. B. of E. W.; Montgomery Building & Construction Trades Council, By J. Earl Garner, Its Secretary.

Duly sworn to by J. H. McNeese, et al. Jurat omitted in printing.

To Ledbetter Erection Company, Inc., or to Crenshaw & Crenshaw, Solicitors of Record:

Take notice that the above and foregoing motion to dissolve injunction is set and will be called for hearing before the Hon. Walter B. Jones, Circuit Judge, in his Court Room, on the — day of ——, 19—, at — A. M. or P. M.

—— ——, —— ——, Solicitors for Respondents.

The undersigned of solicitors for respondents hereby certify that a copy of the above and foregoing motion, together with the above notice of the time of the setting of the hearing, was served upon —— ——, on the — day of ——, 19—, at ——M.

—— ——, Of Solicitors for respondents.

[fol. 22] In Circuit Court of Montgomery County

Decree Setting Cause—December 5, 1950

Upon consideration of the within motion same is set down for hearing before the Court at 12 o'clock noon Wednesday, December 13, 1950. Let notice issue accordingly.

Done this Dec. 5, 1950.

(S.) Walter B. Jones, Circuit Judge.

Filed in Office Dec. 4, 1950. Geo. H. Jones, Jr., Register.

In Circuit Court of Montgomery County

[Title omitted]

Amendment to Motion to Dissolve—Filed December 18, 1950

Come the respondents, separately and severally, and amend their motion to dissolve heretofore filed in this cause as follows:

By striking each and every ground of said motion heretofore filed, 1 through 26, both inclusive.

II

By adding the following grounds of said motion, separately and severally:

28. This court is without jurisdiction to issue said injunction.

29. The State Court is without jurisdiction to issue said injunction.

30. The sole and exclusive remedy provided for the acts complained of in the complaint is Section 10 (a) of the National Labor Relations Act, as amended.

31. The State Court is without jurisdiction of the acts complained of in the complaint.

[fol. 23] 32. The sole and exclusive remedy of the complainant is a proceeding to establish an unfair labor practice, which said proceeding must be conducted before the National Labor Relations Board and the Courts are without jurisdiction unless and until such proceedings are had before the said National Labor Relations Board.

33. Said act provides that a Cease and Desist Order must be obtained from the National Labor Relations Board before a proceeding for an injunction may be had in any Court and it appears upon the face of the Bill of Complaint in this cause that no such proceeding has been had.

34. Remedy by injunction on account of the acts complained of in the complaint is vested exclusively in the National Labor Relations Board.

35. The Congress of the United States, having enacted legislation regulating the rights of employer and employee, when the business of the former is in inter-state commerce, such legislation is exclusive of the right of the state through its courts or its legislature to proceed to regulate the said rights of employer and employee.

36. The Congress of the United States, having enacted legislation regulating the rights of employer and employee, when the business of the former is in inter-state commerce, and having specified the terms and conditions upon which an injunction may be obtained, such legislation is exclusive of the right of the state through its courts or its legislature to proceed to regulate the said rights of employer and employee and to issue an injunction in connection therewith.

37. This Court is without jurisdiction over the subject matter of this case.

38. Only the National Labor Relations Board is authorized to apply for an injunction on account of the acts complained of in this case.

39. This Court is without jurisdiction to issue said injunction on the application of a private person or corporation.

(S.) J. L. Busby, Earl McBee, Solicitors for Respondents.

[File endorsement omitted.]

[fol. 24] AFFIDAVIT OF FRED C. BEAR

STATE OF ALABAMA
Montgomery County

Before me, Catherine G. Cole, a Notary Public in and for said county and State, personally appeared Fred C. Bear, known to me, who being by me first duly sworn, deposes and saith:

That he is Vice President of Bear Brothers, Inc.; and he is familiar with the Bill of Complaint filed in the case of Ledbetter Erection Company, Inc., vs. Montgomery Building and Construction Trades Council and with the answer of Respondents thereto and has read the affidavits proposed to be filed by the attorney for the Respondents. That he, as the Vice-President of Bear Brothers, Inc., is familiar with the facts attending the erection of the apartment building for Montgomery Towers.

Bear Brothers, Inc., has no labor dispute with its employees and has no labor dispute with either the Montgomery Building and Construction Trades Council, the International Brotherhood of Electrical Workers Union, Local #443, or the Carpenters and Joiners Local Union #1796; that none of said Unions are the duly accredited bargaining agent for the employees of Bear Brothers, Inc., and that Bear Brothers, Inc., is willing to negotiate with any labor union which is duly certified as the collective bar-

gaining agent of its employees or any union of its employees; that affiant understands that it is unlawful and improper for him or any of the management of Bear Brothers, Inc., to coerce any of its employees or any of them either to prevent their joining a union or to force them to join a union and this is the position consistently maintained by Bear Brothers, Inc.; and Bear Brothers, Inc., does not know which if any of its employees are members of a union and have never made any effort to ascertain such facts.

Affiant further states that the wage scale for the erection of this apartment building was set by the United States Department of Labor and approved by them prior to or simultaneously with the issuance of a commitment from the Federal Housing Authority for an insured loan on said project; that this is a firm requirement of the Federal Housing Authority and the wage scale is set by the Department of Labor at a scale in line with prevailing wage scale rates.

Affiant further states that a labor dispute or stoppage of work on said project would materially obstruct or interfere with the free flow of goods in interstate commerce; that a [fol. 25] large portion of the materials used in the construction of said job are shipped in interstate commerce and if such job were stopped by union activities, the flow of such goods in commerce would cease; for example, all of the exterior covering of said apartment house is brick, which will be shipped from Texas; the glazed tile from Pennsylvania; the steel sash from Detroit, Michigan; door frames from New York; metal lath from Ohio, plaster from Georgia, Virginia, and Texas; cement from various sources, including places outside of the State of Alabama; the structural steel was rolled at a rolling mill outside of the State of Alabama; paint and acoustical tile are not manufactured in the State of Alabama and are necessarily brought in from outside the State; electrical wiring and fixtures likewise, and in fact a great majority of the materials used on such job will necessarily move in interstate commerce.

Affiant saw the signs used in the picket lines and the affidavit of J. H. McNeese sets out accurately the working on these signs. At no time was the name of Bear Brothers,

Inc., used on the signs in the picket line; that many of the employers working on said project employ solely union labor and it would be impossible for the average layman to know to whom the sign referred, whether it referred to Ledbetter Erection Company, to the plumbing contractor, the electrical contractor, or other of the numerous contractors on said project, all of whose names were shown on a clearly visible sign at the project site.

It is Affiant's understanding that when the first picket began patrolling before the entrance of said project, the steel workers did not consider it a picket line, but when the second picket began patrolling, the steel workers called on the business agent of their Union, Mr. A. C. Bonner of Birmingham, who came to Montgomery to investigate the situation and see whether the steel workers were justified in crossing said picket line.

Affiant further states that the construction of Montgomery Towers, Inc., was begun about June 1st. Numerous sub-contracts were let for work on said job. No effort was made by Bear Brothers, Inc., to prevent the use of union labor on said project and in fact seven of the contracts for said erection were given to people employing only union labor. No effort was made to start any picket line on said project until about November 1st or some five (5) months after construction had begun and after other sub-contractors employing only union labor had had men employed on the job which men were union labor. That at the time said picket line was begun Bear Brothers, Inc., had sub-contracted all of the work which was going to be sub-
[fol. 26] contracted and had no control over whether sub-contractors employed union or non-union labor.

Affiant states that Mr. A. C. Bonner called the St. Louis Office of the International Association of Bridge Structural and Ornamental Iron Workers, to which said employees belonged and was advised that they had no knowledge of the picket line and it was evidently a wild cat strike, which the steel workers would be justified in disregarding. Thereafter, a representative of the U. S. Mediation and Conciliation Service appeared on the scene from Birmingham and discussed the matter with the officials of Bear Brothers,

Inc., and informed them that he was called to Montgomery by the Montgomery Building and Construction Trades Council but also advised them that his office had no jurisdiction since there was no dispute between Bear Brothers, Inc., and its employees; that thereafter on or about Friday, November 17th, Bear Brothers, Inc., was notified by the employees of Ledbetter Erection Company that the steel workers on said job would recognize said picket line and would not return to work as long as said picket line existed, and said employees had further stated that unless the picket line was removed promptly they would seek work elsewhere. That Bear Brothers have a firm contract with Ledbetter Erection Company, under the terms of which, Ledbetter Erection Company is required to erect all of the structural steel and bar joists on said project, along with all riveting and welding, and Bear Brothers, Inc., informed Ledbetter Construction Company of these circumstances and that Bear Brothers would expect Ledbetter Erection Company to complete their contract in accordance with its terms. That on the morning of Monday, November 20th, none of the employees of Ledbetter Erection Company, Inc., appeared at work, and the Vice President of Ledbetter Erection Company, Mr. S. M. Walker, came to Montgomery, with his attorney to see what, if anything, could be done to remove said picket line; that actually the employees of Ledbetter Erection Company did not return to work until Wednesday, November 22nd and at that time only eight of the seventeen who had been employed the previous Friday, returned to work on said job.

Affiant has read the affidavit of J. H. McNeese in which he states that he is not the President of the Montgomery Building and Construction Trades Council, but on or about November 7th Affiant met said John McNeese at the job side, at which time there were present Carl Bear, Mr. Walker, Vice-President of Ledbetter Construction Company, Mr. Fred McDonald, Superintendent for Ledbetter Erection Company, and B. C. Brown, Superintendent for [fol. 27] Bear Brothers, Inc., at which time Mr. McNeese stated that he was President of the Montgomery Building and Construction Trades Council and the subject of said picket line and whether the steel workers should recognize

said picket line were discussed with him, as President of the Montgomery Building and Construction Trades Council.

(S.) Fred C. Bear.

Sworn to and subscribed before me this 12th day of December, 1950. (S.) Ruth Anne O'Connor, Notary Public.

I hereby certify that I have this — day of December, 1950 served a copy of the foregoing affidavit on —— ——, attorney for respondents.

—— ——, of Counsel for Complainant.

Filed in office 18th day of Dec. 1950. Geo. H. Jones, Jr., Register.

AFFIDAVIT OF FRED H. McDONALD

STATE OF ALABAMA
Montgomery County

Before me, Marie H. Collins, a Notary Public in and for said County, in said State, personally appeared Fred H. McDonald, who, being by me first duly sworn, deposes and says:

That I am erection superintendent for Ledbetter Erection Company on the construction job at Montgomery Towers at the Corner of Court and Clayton Streets in the City of Montgomery, Alabama; that I have been with Ledbetter Erection Company for eight years in this capacity. We began the erection of the structural steel at Montgomery Towers building site at said corner of Court and Clayton Streets in the City of Montgomery, about October 23, 1950. On Wednesday, November 1, 1950, for the first time, there was one picket who appeared upon the scene walking up and down in front of the entrance to the job carrying a sign, which, to my best recollection, stated: "This job unfair to the Brotherhood of Electrical Workers." I advised my men that one man did not constitute a picket line and my assistant Ralph Love so advised J. H. McNeese who appeared on the scene that same morning, November 1, 1950, and there represented himself to be President of the Montgomery Building and Construction Trades Council. On the next

day, Thursday, November 2, 1950, there were two pickets, one carrying the sign above described and the other carrying a sign reading "This job unfair to Carpenters' Union Local #1796."

[fol. 28] It is against the rules of our union, the International Association of Bridge Structural and Ornamental Iron Workers to cross a picket line. We are subject to fines and other penalties if we do cross a picket line and for that reason my men and I refused to cross the two-man picket line on November 2, 1950 and did not work on the job at Montgomery Towers on said date. Mr. Lowe called the business agent of our union in Birmingham, Mr. A. C. Bonner, and told him the situation. We stayed off from work until Tuesday, November 7, 1950, at which time Mr. Bonner authorized us to go back to work and said that meanwhile he would send Mr. Strickland, the International representative to Montgomery who would give us the final decision of whether to work or not to work. Mr. S. M. Walker, Vice-President of Ledbetter Erection Company and Mr. Strickland, the International Representative of our union came during the day of November 7, 1950; Mr. Strickland told us that the picket line was illegal; that we should continue to wrok and disregard the picket line. We worked steadily then until November 17, 1950. On this date Mr. Strickland returned to Montgomery and advised our men on the job and me that the union had determined to recognize the picket line and we could therefore not cross it or return to work as long as said picket line was in operation on the job. We accordingly ceased work and I advised Mr. Walker, Vice-President of the Ledbetter Erection Company, that my men and I could not cross the picket line and could not return to work until the picket line had been removed. The men told me that unless the picket line was removed they would have to leave this job and go elsewhere in search of employment with some other concern other than Ledbetter Erection Company because they could not run the risk of crossing the picket line. At this time I had a full force of seventeen men working under me. These men had been working together under me for some time and made a good team. We stayed from work after this occurred until the injunction was issued on Monday, No-

vember 20, 1950, and returned to work on Wednesday, November 22, 1950. When we returned to work on November 22, 1950, only eight of these seventeen men returned to the job and if the picket line had not been removed when it was, I would have lost my entire force.

There have been no disputes of any kind as to wages, working conditions, hours or anything pertaining to our employment between the members of our union working on this job in Montgomery, Alabama and the Ledbetter Erection Company.

(S.) Fred H. McDonald.

[fol. 29] Sworn to and subscribed before me this 14th day of December, 1950. (S.) Marie H. Collins, Notary Public, Montgomery County, Ala.

I hereby certify that I have this — day of December, 1950, served a copy of the foregoing affidavit on ——— ——, attorney for respondents.

———— ——, Of Counsel for Complainant.

Filed in Office 18th day of Dec. 1950.

Geo. H. Jones, Jr., Register.

AFFIDAVIT OF S. M. WALKER

STATE OF ALABAMA,
Jefferson County:

Before me, Minor Sternenberg, a Notary Public in and for said County and State, personally appeared S. M. Walker, known to me, who, being by me first duly sworn, deposeth and saith:

I am Vice President of Ledbetter Erection Company and have been Vice President of this Company for a period of over three years. This concern has as its principal place of business, Birmingham, Alabama and is a corporation, organized and existing under the laws of the State of Alabama. All of the structural iron workers employed by Ledbetter Erection Company are members of the International Association of Structural Steel, Bridge, and Ornamental Iron

Workers Union; and all of the operators employed by our company are members of the International Union of Operating Engineers, both of these unions being affiliated with the American Federation of Labor; and said company is engaged in the business of the erection of structural steel. We have operated under contracts with these unions since 1937. Under the terms of our contract with these unions, we agreed to employ no employees except members of these unions and not to sub-let any part of the contract to anyone employing other than union workers.

On or about June, 1950, Ledbetter Erection Company entered into a contract with Bear Brothers, Inc., under the terms of which Ledbetter Erection Company agreed to erect the structural steel and joists for the apartment house known as Montgomery Towers, Inc., on a lot on the corner of Court and Clayton Streets in the City of Montgomery, Alabama, said work to be done in accordance with plans and specifications furnished it and in accordance with the said written contract. Said apartment house was to be ten stories in height with steel frames which required the erection of heavy steel girders and columns. When the trouble [fol. 30] with the picket line began in the Fall of 1950, we had eighteen people all members of the above named unions, consisting of two foremen, one operating engineer, and fifteen iron workers. We started work on this job on October 23rd and as far as I know, everything went along harmoniously until around November 2nd. We had no labor disputes or controversy of any kind with any of our men or their unions. Around November 2nd, my job superintendent, Mr. Fred McDonald, called me in Birmingham and told me that there was a picket line around the job and our men refused to cross the picket line. I immediately called the International Union in St. Louis, and was advised that they would investigate. I talked with Mr. J. R. Downes, and I told him that we were being used as a whip to aid in organization of Bear Brothers as a union contractor. He told me that he realized this and that he would not permit his men or his contractors to be used in this manner and asked me to send him a telegram confirming the fact that we were having these difficulties. We received an answer stating that the men would be ordered back to work on Monday, November

6th, but on the 6th the men still refused to cross the picket line and on the 7th of November, 1950, I came to Montgomery and went up to the job site and there was Mr. A. C. Bonner, the business representative for the Iron Workers Local, from Birmingham; Mr. McNeese, who represented himself as the President of the Montgomery Building and Construction Trades Council, and the business representatives of the Electricians Union and the Carpenters Union, whose names I do not remember. The men were not working then, but were standing around in groups talking and I saw there were at that time two pickets walking around and up and down in front of the entrances of the job, carrying signs, on which there were the words: "This job unfair to Carpenters Local Union No. 1796", and the other signs read "This job unfair to Electricians' Local Union No. 443, I.B.E.W., Affiliated with A. F. of L." Around noon they took away the two signs above described and substituted for them signs that said "This job Unfair to Montgomery Building and Construction Trades Council." I went up to Mr. Bonner and asked him why our men could not go to work, since the pickets were believed to be illegal and at least until the International Representative could advise if they were illegal. Mr. Bonner stated to me that he had asked that the picket lines be removed, whereby our men could return to work but had been refused. After some discussion, Mr. Bonner said if the men wanted to they could return to work until Mr. Strickland, their International Representative, who is also the Vice President of the Union, arrived in Montgomery and made the final decision. About noon Mr. Strick- [fol. 31] land arrived at the Jefferson Davis Hotel and we had lunch together and I told him the same facts I had told Mr. Downes in St. Louis. A little after noon, Mr. Strickland went to the job site and had a talk with the men, and they continued working after this through the morning of November 18th, when I was notified by Mr. Fred McDonald, the job foreman, that Mr. Strickland had informed the men that the picket line was now recognized by the union and they would not be allowed to cross it. He further stated that the men said they would have to leave the employ of our company and go to another construction company in search of work if the picket line was not removed by Monday. (Our

company does not do any work on Saturday or Sunday.) I was confronted, therefore, not only with the prospect of being unable to fulfill the written contract with Bear Brothers, Inc., which our company had, but also with the disintegration of the labor force we had on this job in Montgomery. Besides these factors, we had a great deal of heavy machinery and equipment on this job, which was being kept idle and which was very expensive to move, and which would continue idle as long as our men could not do any work.

Under these circumstances I consulted my attorney and we applied to the Court in Montgomery for, and obtained, an injunction against the picketing on November 20th, 1950.

There is no connection between Ledbetter Erection Company and Bear Brothers, Inc., other than the contract under which my company agreed to erect the structural steel for the apartment house under construction at the corner of Court and Clayton Streets in Montgomery. Ledbetter Erection Company does steel erection work in all of the Southeastern States, doing general steel erection work, including bridges, buildings and tanks.

Due to contracts and schedules of work, any tie-up of the equipment affects all of the other jobs scheduled and the crane in operation on the present job in Montgomery, Alabama hereinabove described has been scheduled for work on other jobs in the State of Alabama, and out of the State of Alabama; which jobs are now being delayed because of the delay of work in Montgomery, caused by the picket line. This crane is an expensive piece of machinery, costing $25,000.00. If the picketing is resumed on the job here, this crane will be tied up where it is now and it will mean a ruinous loss to the company, because we will be unable to have any union labor move the crane, and the other jobs will have to suffer because of the loss of the use of it while it is immobilized on the site of this job.

(S.) S. M. Walker.

[fol. 32] Sworn to and subscribed before me this the 18th day of December, 1950. (S.) Minor Sternenberg, Notary Public. (Seal.)

Filed in office 18th day of December, 1950.

George H. Jones, Jr., Register.

Affidavit of J. E. Garner

State of Alabama,
Montgomery County;

Personally appeared J. E. Garner, who says he is an officer of the International Brotherhood of Electrical Workers Union, Local Number 443, and is well acquainted with the picketing of the Bear Brothers job at Court and Clayton Street and that during the time the picket was on the job from November 1st up to November 20th, there were Iron Workers on this job each day. On Monday, November 20th, the day the injunction was issued the Iron Workers and the Operating Engineer- stayed away from the job for the first time.

Affiant further says that at no time during the picketing of Bear Brothers job were there any violence and at no time were there more than two pickets with signs, one of which read "This job is unfair to Montgomery Building Trades Council". Affiant further says that he has been for a long time a resident of Montgomery but does not know of any extraordinary need by any of the soldiers at the Maxwell Air Force Base for additional housing but, however, if that be true, it in the opinion of affiant would not be enough to cause an intra--state job to be under the Taft-Hartley Act.

But that the picket was placed on this job in an effort to protect the wage scale and working conditions created by many years of work of the Montgomery Building Trades through their Trades Council.

(S.) J. Earl Garner.

Sworn to and subscribed before me this — day of December, 1950. (S.) Amos H. Wilson, Notary Public. (Seal.)

I hereby certify that I have this 11th day of December, 1950 served a copy of the foregoing Affidavit on Jack Crenshaw and M. L. Gwaltney, Attorneys for Complainant.

(S.) J. L. Busby, Attorney for Defendant.

Filed in office 18th day of Dec. 1950.

Geo. H. Jones, Jr., Register.

[fol. 33] AFFIDAVIT OF J. H. McNEESE

STATE OF ALABAMA,
Montgomery County:

Know all men by these presents:

Personally appeared J. H. McNeese and says he is one of the Respondents in the case of Ledbetter Erection Company vs. Montgomery Building and Construction Trades Council, and that he is not the President of the Council; that he knows that the Iron Workers and operating engineers who were working for complainant did not refuse to go through the picket line until November 20th; the day the injunction was issued the Iron Workers and Engineers were off that day. Bear Brothers employed men of all crafts but did not recognize the union. They have no established wage scale that is comparable to the union scale and they refuse to deal with the union representatives. The Montgomery Building Trades Council have a rule requiring all crafts working in its jurisdiction to submit to its rules and regulations.

There were three different signs used on the picket line. First, Carpenter's Union 1796 had a sign which read "This job unfair to Carpenters' Local Union 1796". Second, the Electricians at one time had a sign which read "This job unfair to Local union 443 I.B.E.W., affiliated with A. F. of L."; Third, the Building Trades Council sign which was being used when the injunction was issued had the words "This job unfair to Montgomery Building Trades Council A. F. of L.".

I never heard of the Iron Workers asking any one to remove the picket and I am sure no such request was made of the Trades Council.

(S.) J. H. McNeese.

Sworn to and subscribed before me this 12 day of Dec. 1950. (S.) Amos H. Wilson, Notary Public.

I hereby certify that I have this 11th day of December, 1950, served a copy of the foregoing affidavit on Jack Crenshaw and M. L. Gwaltney, Attorneys for Complainant.

(S.) J. L. Busby, Atty. for Defendant.

Filed in office 18th day of Dec. 1950.

Geo. H. Jones, Jr., Register.

[fol. 34] IN CIRCUIT COURT OF MONTGOMERY COUNTY

[Title omitted]

MOTION TO WITHDRAW ANSWER—Filed December 18, 1950

Comes the respondents, separately, and severally, and withdraw the answer heretofore filed by them.

(S.)J. L. Busby and Earl McBee, Solicitors for Respondents.

[File endorsement omitted.]

IN CIRCUIT COURT OF MONTGOMERY COUNTY

DECREE DENYING MOTION TO DISSOLVE TEMPORARY INJUNCTION—December 21, 1950

[Title omitted]

This cause comes on to be heard on motion of the Respondents to dissolve the temporary injunction heretofore issued. In open court the Respondents withdraw the answer heretofore filed and amend the motion to dissolve by striking grounds 1 through 26 inclusive and filing additional grounds numbered 28 through 39 attacking the jurisdiction of the Court. The Court having considered the affidavits filed by both parties and having heard argument of counsel is of the opinion that the motion to dissolve is not well taken.

It is therefore, ordered, adjudged and decreed by the Court that the Respondents' motion to dissolve temporary injunction be and the same is hereby denied.

Done this 21 day of December, 1950.

(S.) Walter B. Jones, Circuit Judge.

[File endorsement omitted.]

[fol. 35] In Circuit Court of Montgomery County

[Title omitted]

Motion to Increase Injunction Bond—Filed December 29, 1950

Comes the respondents, separately and severally, and move the Court to increase the injunction bond given by the complainants in said cause to the sum of Five Thousand Dollars ($5,000), or such amount as the Court may deem proper; and as grounds of said motion states and represents, separately and severally:

1. The respondents are greatly damaged and will be further damaged by the continuance of said injunction in a sum at least ten times the present bond of Five Hundred Dollars ($500.00).

2. The respondents have been put to great expense in and about the dissolution of said injunction and will be put to further great expense in and about the dissolution of said injunction in a sum at least ten times the present bond of Five Hundred Dollars ($500.00).

3. The respondents maintain that the Court is without jurisdiction to issue the said injunction because of applicable federal law and the ultimate decision on the dissolution of said injunction may rest in the Supreme Court of the United States to the great cost and expense of respondents.

4. The bond of Five Hundred Dollars ($500.00) is grossly inadequate.

In support of this motion the respondents offer the entire file in this cause, including the motion to dissolve as amended and the affidavits filed at the hearing on the motion to dissolve.

(S.) J. L. Busby, Earl McBee, Solicitors for Respondents.

To Ledbetter Erection Company or Crenshaw and Crenshaw, or M. L. Gwaltney, Solicitors of Record:

Take notice that the above and foregoing motion will be heard before the Honorable Walter B. Jones on the 2nd day of January, 1951; at 10 A.M.

(S.) Earl McBee, Of Solicitors of Record for respondents.

I hereby certify that I have served a copy of the above and foregoing motion upon Crenshaw and Crenshaw, Montgomery, Alabama, and M. L. Gwaltney, Birmingham, Alabama, solicitors of record for complainant, together with [fol. 36] notice of the date of the hearing of the same, on the 29 day of December, 1950.

(S.) Earl McBee, Of Solicitors of Record for Respondents.

[File endorsement omitted.]

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA, IN EQUITY

[Title omitted.]

DECREE INCREASING INJUNCTION BOND—January 2, 1951

This cause now coming on to be heard is submitted for decision on the motion filed herein on December 29, 1950, by the Respondents, moving the Court to increase injunction bond heretofore given in this cause, and there are present counsel for the respective sides, and the matter has been argued to the Court, and now being understood by the Court, the Court is of the opinion that the amount of the injunction bond in this cause should be increased from $500.00 to $2500.00. It is therefore,

Ordered, adjudged and decreed by the Court that the injunction bond in this cause be, and the same is hereby increased from the sum of $500.00 to $2500.00, and that Complainant may have until Monday, January 8, 1951, to give said bond, and failing therein, Respondents may move for a dissolution of said temporary injunction.

Done this January 2, 1951.

(S.) Walter B. Jones, Circuit Judge.

[File endorsement omitted.]

[fols. 37-41] Additional Injunction Bond for $2500 approved and Filed Jan. 8, 1951, omitted in printing.

[fols. 42-49] Security for Costs of Appeal to Supreme Court—Omitted in Printing

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[fol. 50] In Circuit Court of Montgomery County

Notice of Appeal

[Title omitted]

To Ledbetter Erection Company, Inc.:

Whereas, Respondents have prayed for and obtained an appeal to the Supreme Court of the State of Alabama from the decree rendered in the above stated cause by the Circuit Court of Montgomery County, In Equity, on the 21st day of December, 1950, and have given security for the costs of said appeal; said appeal being made returnable to the second Monday in March, 1951.

Now, therefore, you are hereby cited to appear at the Supreme Court of the State of Alabama, on the second Monday in March, 1951, and defend on said appeal, if you shall think proper so to do.

Witness my hand this 12th day of January, 1951.

(S.) Geo. H. Jones, Jr., Register.

Received in office Jan. 13, 1951. G. A. Moseley, Sheriff.

Executed by serving a copy of the within Files Crenshaw, 1-16-51.

G. A. Moseley, Sheriff, Montgomery County. By Mathis & Mitchell, Deputy Sheriff.

[fol. 51] In the Circuit Court of Montgomery County, in Equity

Certificate of Appeal—January 12, 1951

[Title omitted]

I, Geo. H. Jones, Jr., as Register of the Circuit Court of Montgomery County, Alabama, In Equity, do hereby certify

that an appeal was taken to the Supreme Court of the State of Alabama in the above stated cause on the 10th day of January, 1951, by the Respondents: Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith and Monroe Henderson, from a decree rendered on the 21st day of December, 1950, and that said appeal is made returnable to the second Monday in March, 1951.

I further certify that Montgomery Building & Construction Trades Council, International Brotherhood of Electrical Workers Union, Local #443, Carpenters & Joiners Union Local #1796, J. H. McNeese, Ross Smith, and Monroe Henderson, are principals and Employers' Liability Assurance Corporation, Ltd., is surety, for the costs of said appeal.

Given under my hand and seal of office, this the 12th day of January, 1951.

(S.) Geo. H. Jones, Jr., As Register of the Circuit Court of Montgomery County, Alabama, In Equity.

[fol. 52] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 53] In Circuit Court of Montgomery County

Assignment of Errors

Come the Appellants, separately and severally, and say that there is manifest error in the record and proceedings in the case in the Circuit Court of Montgomery County, Alabama, In Equity, and for said error make the following assignments, separately and severally or assign the following grounds, separately and severally:

1. The trial court erred in rendering its decree denying respondents' motion to dissolve temporary injunction issued in this cause (R. 29, 30).

2. The trial court erred in overruling or denying subsection A of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

3. The trial court erred in overruling or denying subsec-

tion B of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

4. The trial court erred in overruling or denying subsection C of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

5. The trial court erred in overruling or denying subsection D of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

6. The trial court erred in overruling or denying subsection E of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

7. The trial court erred in overruling or denying subsection F of respondents' motion to dissolve temporary injunction heretofore issued in this cause (R. 12, 29, 30).

(S.) J. L. Prsby, Earl McBee, Attorneys for Appellants.

[fol. 54] IN THE SUPREME COURT OF ALABAMA

[Title omitted]

ARGUMENT AND SUBMISSION—May 8, 1951

Come the parties by attorneys and argue and submit this cause for decision.

[fol. 55] IN THE SUPREME COURT OF ALABAMA

[Title omitted]

OPINION

FOSTER, Justice.

The bill of complaint in this case was filed by appellee against appellants, labor organizations which are unincorporated associations, having their places of business in the city and county of Montgomery. The bill alleges in substance, and so far as here material, that Bear Brothers are general contractors and had entered into a contract with Montgomery Towers, Inc., for the construction of a large apartment house in the City of Montgomery in accordance

with the plans and specifications. That the complainant entered into a contract with Bear Brothers whereby it agreed to erect and rivet all the structural steel necessary for the erection of said apartment house. The bill alleges that the employees of Bear Brothers are not organized as union labor, and there was not a labor dispute existing between the complainant and any of its employees; that the respondents were not representatives of employees of Bear Brothers, and did not seek to represent the employees of complainant. The bill then alleges that respondents were seeking to force Bear Brothers to recognize or bargain with a labor organization, and to that end respondents placed a picket line across the entrance to the property where the building was being constructed. That the union employees of complainant were not willing to cross that [fol. 56] picket line to perform work on said building for the complainant, causing irreparable damages to complainant, and that respondents had declined to remove said picket line so that complainant's employees could continue to work on the job. It is also alleged in the bill:

"(12) That since the establishment of said picket line by the respondents none of the employees of the complainant Ledbetter Erection Company, Inc., will cross said picket line and the erection of said structural steel has been stopped; that if said picket line is maintained complainant will suffer irreparable damage for which it will have no adequate remedy at law; that the remedy of an action and damages provided by section 303 of the Taft-Hartley Act (29 U.S.C.A., section 187) is inadequate; that the complainant's valuable heavy machinery is being kept idle at complete loss to the complainant and complainant has been notified by its employees that if they are prevented from working on this job by reason of said picket line they will be forced to seek employment elsewhere; that in order to keep complainant's experienced crew of workmen together it would be necessary for the complainant to pay said employees even though they remained idle for an indeterminate time at a resulting loss to the complainant for which no adequate damages could be assessed or collected; that complainant's employees

have notified complainant that unless said picket line is removed on November 20, they will seek employment elsewhere; that in addition thereto it might become necessary for complainant to default in its contract with Bear Brothers, Inc., as a result of which complainant would be subjected to suits for damages for such breach.

"(13) That said apartment building is being erected under the terms of section 608 of the National Housing Act under a commitment issued by the Federal Housing Authority certifying that such housing was essential and that there existed in Montgomery a shortage of adequate housing units for rental purposes; that since the erection of said building was begun defense activities at Gunter Field and Maxwell Field have substantially increased; that complainant is informed and believes and on such information and belief avers that the commanding officer at Maxwell Air Force Base, Montgomery, Alabama, has stated publicly that after January 1, 1951, that defense activities at Maxwell Air Force Base will be stepped up to such an extent that said Air Force Base will have a larger personnel than ever before in its history; and before such defense activities were initiated the Chamber of Commerce was asked to ascertain whether the City of Montgomery could absorb 500 additional families and in making said survey the Chamber of Commerce took into consideration the availability of this apartment house under erection which would supply 124 additional rental units; that if the erection of said apartment house is delayed such rental units will not be available for the use of the members of the armed forces or other defense activities in and around Montgomery and the public interest will be inimically affected.

"(14) That complainant and its employees are entirely innocent parties and are in no way engaged in any labor dispute among themselves or with anyone else. That complainant's employees are unwilling to cross said picket line for the reason that if they cross said picket line they might be blackballed and prevented from working on further jobs; that the effect of the continued maintenance of such picket line is therefore

to prevent complainant from engaging in business and performing its said contract and also prevents the complainant's employees from engaging in gainful employment in Montgomery to the irreparable injury to both the complainant and its employees."

[fol. 57] The case comes here from a decree overruling a motion to dissolve an injunction which was theretofore issued. Upon the hearing of the motion the respondents withdrew an answer to the bill which had been filed and the first twenty-six grounds of the motion, leaving the twenty-seventh ground which is in substance that the complainant complains of a violation of section 8 (b) of the National Labor Relations Act, and that complainant has an adequate remedy as provided in section 10 of that Act. Respondents further amended their motion to dissolve the injunction by adding grounds twenty-eight to thirty-nine, inclusive. The substance of those grounds of the motion is that the sole and exclusive remedy provided for the acts complained of is section 10 of the National Labor Relations Act as amended, and that the State court is without jurisdiction by reason of the provisions of said section 10.

Appellee, who is the complainant, insists on this appeal that under that status of the pleading the only question presented is the equity of the bill, since there is no answer denying its allegations; and then insists the bill does not show that the questions involved affected the rights of the employees and employers in their relations affecting commerce, and that so far as the allegations of the bill are concerned it relates purely to a local transaction. But the allegations of the bill itself show that reliance is had upon the National Labor Relations Act as amended, for the purpose of determining whether or not the complainant is entitled to an injunction.

The bill specifically refers to the fact that the alleged picketing is secondary, as defined in section 8 (b) (4) of said Act, and that the remedy provided in section 303 of it for damages is inadequate, and that there is no adequate remedy at law.

We will refer to the Act in question as the Labor Management Relations Act of 1947 (or Labor Management Act) for that is the name given to it by section 1 of the Act.

It is sometimes called the Taft-Hartley Act, but it is all one and the same Act and serves to amend the National Labor Relations Act of 1935. As amended it is codified in Title 29 U.S.C.A., beginning with section 141 (pocket part). Section 8 (b) (4) will be found in Title 29, section 158, U.S.C.A. (pocket part). That section makes it unfair labor practice, so far as here material, for a labor organization or its agent:

[fol. 58] "(b) (4) to engage in, or to induce or encourage the employees of any employer to engage in a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, article, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9".

The bill alleges that the defendants were engaged in an unfair labor practice under such definition, and that contention is not seriously controverted by appellants.

Section 303 of that Act, which is section 187 of Title 29 U.S.C.A. (pocket part), makes it unlawful for any labor organization to engage in or induce or encourage employees, etc., using the same language as in section 8 (b) (4), *supra*. Subsection (b) thereof authorizes a suit in any United States District Court for damages sustained by him by reason of such conduct.

Section 10 (a) of said Act is section 160 of Title 29 U.S.C.A., (pocket part), and provides: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be

affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise." There was also a proviso added permitting an agreement to submit labor disputes affecting commerce to a state agency.

The question presented on this appeal is whether or not said section 10 (a) serves to exclude jurisdiction of a state court to enjoin an unfair labor practice by a labor organization under section 8 (b) (4) and section 303, *supra*, which does not impede the flow of commerce, but which incidentally affects commerce.

The jurisdiction of the board was set up in the National Labor Relations Act before it was amended in section 10 thereof (section 160, Title 29 U.S.C.A.), in the following language: "The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8, *supra*) affecting commerce. This power shall be *exclusive and shall* not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, [fol. 59] law, or otherwise." The only difference between that and section 10 (a) of the Labor Management Act is that in the Labor Management Act the words "exclusive and shall," as they appear together, are excluded and also the word "code," otherwise the Labor Management Act is the same as it was under the old law, except for the proviso added. Section 8 (b) (4) of the Labor Management Act has no counterpart in the original Labor Relations Act. The unfair practices in the original act related to those of the employer only, whereas the addition of (b) to section 8, *supra*, enumerates unfair practices of a labor organization. Section 303 of the amended act, which is section 187 of Title 29 U.S.C.A. (pocket part), like section 8 (b) has no counterpart in the original act, but is new to the amendatory act.

Under section 10 (1) of the amended act the board has jurisdiction and power, upon complaint being made, to seek an injunction in the United States District Court restraining a labor organization from engaging in an unfair labor practice as defined by the amended act.

The original act, section 10, contained subsections extending from (a) to (i), inclusive. The amended act adds

subsections (j), (k) and (l). They both provide in subsection (b) thereof in substance that whenever a charge is made that any person (which now includes both employer and employee) has engaged in or is engaging in such unfair labor practice, the board shall cause a complaint to be served upon such person, stating the charges. But the original act contained no provision for court action until after the board had made a cease and desist order. Under the amendment and by virtue of subsection (l), so far as we are here concerned, it is provided that whenever such charge is that a person has engaged in unfair labor practice within the meaning of paragraph (4) (A), (B) or (C) of section 8 (b), here applicable, a preliminary investigation of such charge shall be made forthwith and, if there is reasonable cause to believe such charge, the officer or regional attorney, to whom the matter is referred, shall on behalf of the board petition in a District Court of the United States, etc., for appropriate injunctive relief pending the final adjudication of the board with respect to such matter. It will be observed, this has reference to an unfair labor practice of a labor organization and not an unfair labor practice by the employer.

[fol. 60] So that when the complaint is against the employer court action is not available by virtue of the Act until there has been an order to cease and desist. Whereas when the complaint is as to unfair labor practice of a labor organization, such injunctive relief is available on behalf of the board if upon preliminary investigation the officer or regional attorney has cause to believe the charge is true and commerce is involved.

It therefore appears that, in respect to the situation at hand, we are dealing with an unfair labor practice of a labor organization for which [illegible] is given by subsection (l) of section 10, wherein it [illegible] necessary to wait for a determination upon the merits of the complaint before injunctive relief is made available, but this may be done promptly upon preliminary investigation, if the officer has cause to believe that the charge is true.

It is well understood that when the National Congress within its constitutional power passes an act conferring a right and providing a remedy, such remedy so provided

is not ordinarily exclusive, thereby preventing such other remedies as may be available to obtain its benefits under state law then existing. This principle was fully considered by us in the case of *Forsyth* v. *Central Foundry Co.*, 240 Ala. 277, 198 So. 706. We do not find where the principle there declared has been set aside by any decisions of the United States Supreme Court, but has been generally approved. *Mengel* v. *Ishee*, 4 So. 2d (Miss.) 878. See, *Overnight Motor Trans. Co.* v. *Missel*, 316 U. S. 572, 62 S. Ct. 1216; *Walling* v. *Belo Cor.* 316 U. S. 624, 62 S. Ct. 1223.

It is clear that ordinarily the jurisdiction of a state court is competent to grant injunctive relief where the purpose of the injunction is to restrain either the unlawful means by which picketing is maintained or the unlawful purpose which is sought by it (*Hotel and Restaurant Employees* v. *Greenwood*, 249 Ala. 265, 30 So. 2d 696; *Milk Wagon Drivers Union* v. *Meadowmoor*, 312 U. S. 287, 61 S. Ct. 552; *Hotel and Restaurant Employees* v. *Wisconsin*, 315 U. S. 437, 62 S. Ct. 706; *Carpenters and Joiners Union* v. *Ritter's Cafe*, 315 U. S. 722, 62 S. Ct. 807), and that this right will exist, although such picketing is in respect to commerce, unless Congress has otherwise provided. *Minneapolis and St. Louis R. R. Co.* v. *Bombolis*, 241 U. S. 211, 36 S. Ct. 595, 598; *Forsyth* v. *Central Foundry Co.*, *supra*, and cases there cited. Therefore, when [fol. 61] commerce is affected, under the terms of the Labor Relations Act as amended, injunctive relief in the state court would not be set aside on account of such Act of Congress, unless it clearly excluded the jurisdiction of the state court in that respect.

It is contended by appellee that section 10 (a), *supra*, which provides "this power (of the board) shall not be affected by any means of adjustment or prevention that has been or may be established by agreement, law or otherwise," as it now appears, leaving out the word "exclusive," simply means what it says that, although there may be other remedies provided by law, they shall not affect the power of the board, which it is claimed is the plainly expressed meaning of that clause. Whereas the original act not only meant that but also meant, as it said, that the power of the board shall be exclusive.

Of course Congress could with respect to commerce make provision for an exclusive remedy, which the original act did.

It is not contended that the amended act by its terms confers any power in that respect upon a state court. But it is contended that where that power was then in existence, except as taken away by the exclusive feature of the original act, the elimination of the exclusive feature merely served to remove an impediment in the use of the remedy then existing in a state court.

In determining the effect of eliminating the exclusive term of the original act, it is necessary to analyze not only that particular feature of the amendment but the Act as a whole as amended in other respects in connection with the original act itself.

Appellant places much reliance upon the case of *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 Fed. 2d 183, which was a case before the United States Circuit Court of Appeals. A bill for an injunction had been filed in the United States District Court by a labor union to require the employer to bargain with the union. The Norris-LaGuardia Act prohibited the issuance of such an injunction. The question was whether the Labor Management Act conferred jurisdiction upon the district court in such a suit, notwithstanding the Norris-LaGuardia Act. The court held that the Labor Management Act did not confer such jurisdiction upon the District Court of the United States, except by petition of the labor board.

In order to understand the language of the opinion in that case, it must be borne in mind that the court was [fol. 62] dealing with that particular question, especially that part of the opinion which says that the change made by eliminating the word "exclusive" did not vest the court with general jurisdiction over unfair labor practices, but was intended to recognize the jurisdiction vested in the courts by section 10, subsections (j) and (l). When it says the "courts" it was there referring to the federal district courts, and whether jurisdiction was conferred upon the federal courts other than at the suit of the board. The opinion quoted from the report of the conference committee of Congress respecting the effect of such a change, saying that the conference agreement accepted the Senate amend-

ment that such exclusive jurisdiction was eliminated because of the provisions of the Act authorizing temporary injunctions enjoining alleged unfair labor practices, and because it made unions suable; but retained the provision that the board's power should not be affected by other means of adjustment or prevention. The following feature of said report was also copied in said opinion: "The conference agreement adopts the provisions of the Senate amendment by retaining the language which provides the board's power under section 10 shall not be affected by other means of adjustment. The conference agreement makes clear that, *when two remedies exist, one before the board and one before the courts, the remedy before the board shall be in addition to, and not in lieu of, other remedies.*" The opinion in analyzing that feature of the report, observes that "The last sentence of the quotation does not mean, of course, that a general remedy in the courts is being given by the Act, *but merely that an option existed where a remedy in the courts was given by the Act, or existed otherwise.*" (Italics supplied.) It was also said that if the effect was intended to make a fundamental change in the jurisdiction (of federal courts) to deal with unfair labor practices that important fact would have been referred to. It is again said:

> "We do not mean to say that unusual cases may not arise where courts of equity could be called upon to protect the rights of parties created by the act. Cf. Steele v. Louisville & N. R. R., 323 U. S. 192, 65 S. Ct. 226, 89 L. Ed. 173; A. F. of L. v. N. L. R. B., 308 U. S. 401, 412, 60 S. Ct. 300, 84 L. Ed. 347. What we have here, however, is not an unusual case calling for the exercise of extraordinary jurisdiction, but an ordinary unfair labor practice case involving alleged refusal to bargain. For such a case, the plaintiff has been provided an adequate administrative remedy before the Labor Board; and certainly the extraordinary powers of a court of equity may not be invoked until this administrative remedy has been exhausted.—Newport News Shipbuilding & Dry Docks Co. v. Schauffler, 4 Cir. [fol. 63] 91 F. 2d 730, 731, affirmed 303 U.S. 54, 58 S. Ct. 466, 82 L. Ed. 646."

That case was dealing with the jurisdiction of the United States District Court, which is of statutory creation authorized by the Constitution,—Article 3, Section 1,—and whose jurisdiction is limited by congressional grant. 36 Corpus Juris Secundum 512.

When properly analyzed, we think the effect of that opinion (*Amazon Cotton Mill Co.* v. *Textile Workers Union, supra*), does not conflict with the contention of appellee, to the extent that it was not the intention of Congress to make the administrative remedy exclusive in respect to all unfair practices affecting commerce; but that it was to be optional *where a remedy otherwise* existed in the equity courts to protect the rights of parties from irreparable damages, when the free flow of commerce was not impeded.

We have here a court of general equity powers, having the constitutional authority to issue injunctions without other grant than by section 144, Constitution of Alabama.

In this State a labor organization, being an unincorporated association, is subject to suit under State statute. Title 7, section 143, Code. That was not so in the federal courts, but the Labor Management Act made it so that the Federal District Court may have jurisdiction at the suit of the labor board for an injunction.

It will be observed that in the *Amazon Cotton Mill case, supra,* the court was not dealing with the power to use an existing remedy, but was dealing only with the question of whether or not the Labor Management Act confers jurisdiction upon the District Court of the United States at the suit of a private party, when such jurisdiction was at that time otherwise prohibited. It may be that some of the broad terms appearing in the argument would support a holding that it was intended to set aside any existing remedy at the suit of a private party in any of the courts; but when the Act impliedly reserves the power then otherwise existing, the argument must be limited to the question before the court, and that was whether the Labor Management Act conferred jurisdiction at the suit of a private party which was expressly prohibited by the Norris-LaGuardia Act, intending thereby to amend the Norris-LaGuardia Act.

The clause in question, saving other means of prevention, either at the time established or that may be established, [fol. 64] seems to manifest a purpose to take care of the

jurisdictional power then being conferred by subsection (l) on the district courts for a violation of section 8 (b), as well as any such jurisdiction "otherwise" existing in any court possessed of general power to grant injunctive relief, when the administrative remedy is inadequate.

If it was merely to harmonize with the further administrative remedy added to section 10 (a) by the proviso and the procedure under subsection (l), it would not have been appropriate to use the language to which we have referred.

Appellant also relies upon the case of *International Longshoremen* v. *Sunset L. & T. Co.*, 77 Fed. Supp. 119, by a district court. That case, like the *Amazon case, supra,* was a determination of whether an injunction in labor disputes had been extended generally to Federal District Courts by the Labor Management Act. It must of course be considered in connection with the nature of the suit and the particular controversy before the court.

However, it is not supposed or contended by appellee that the Labor Management Act serves to enlarge the rights of private litigants or to confer jurisdiction at their suit, but merely serves to eliminate that feature of the original act which excluded all courts from exercising injunctive jurisdiction and limited all jurisdiction to the board exclusively. The board could before the amendment make a cease and desist order and upon a failure to comply with it proceed in court for its enforcement. That procedure was exclusive.

The next case relied on by appellants is that of *Amalgamated Utility Workers* v. *Consolidated Edison*, 309 U. S. 261, 60 S. Ct. 561. In it a private party sought an injunction to enforce an order by the labor board, that arose prior to the 1947 amendment. We do not see that it has application to the present situation.

Another case relied on by appellants is that of *Gerry of California* v. *Superior Court of Los Angeles*, 194 Pac. 2d (Calif. Supreme Court) 689. In that case an injunction was sought in a state court against an unfair labor practice under section 8 of the Labor Management Act, as in the instant case. The Court acted in reliance upon the case of *Amalgamated Utility Workers* v. *Consolidated Edison*, to

which we referred *supra*. While much is said in the opinion to the effect that although the right to an injunction may exist under state law, but for the Labor Relations Act, it could not now be exercised on account of such Act.
[fol. 65] Still another case cited by appellants is *Ex parte DeSilva*, 199 Pac. 2d 6. That was also a decision by the Supreme Court of California and was based upon the *Gerry case, supra*. See, 16 A. L. R. 2d 786.

There was no consideration given in those cases to the question of whether a person has the right to an injunction to prevent irreparable damage by an unfair labor practice prohibited by the Labor Management Act, but which did not affect the flow of commerce, and in which the administrative remedy was inadequate.

Appellants also rely on the case of *Amalgamated Assn. v. Wisconsin Employment Relations Board*, recently decided by the Supreme Court of the United States, 95 L. Ed. p. 383, 71 S. Ct. 359.

It will be observed in that case the court was not dealing with the power of a state court to enforce a right granted by an Act of Congress, but it was concerning the question of whether or not a state court would enforce state legislation in a field which had been covered by federal legislation, and which was in conflict with federal legislation which had superior power in that respect. It was made clear in that case that in the state court the effort was made to enforce a state law in conflict with one adopted by Congress relating to commerce, when the federal law is superior, holding that the state law must yeild to the federal law.

We wish here to refer again to the principle that when a complainant comes into a court of equity seeking an injunction for the purpose of protecting a right, it is immaterial whether that right is one conferred by state or federal law unless prohibited by feredal law. It is the existence of the right which is material, and not the source of its enactment, provided the enacting power had due authority. But when a complainant comes into court it is not for him to choose whether his right is such as is conferred by the state or federal law. When properly analyzed his right is dependent upon whether the one or the other is there effective, and it is not open to him to make a selection, for only

one law obtains to fix the status of a given situation. A person cannot legislate by choosing the applicable law. *Patterson* v. *Jefferson County*, 238 Ala. 442, 191 So. 681; *State* v. *Summer*, 248 Ala. 545, 28 So. 2d 565.

In this situation, it is clear that in respect to commerce, the Federal Congress has legislated defining unfair labor [fol. 66] practices by labor organizations as well as by employers, and such definition supersedes any state legislation doing so. The case of *Amalgamated Assn.* v. *Wisconsin, supra*, therefore, is not in point for the purpose of determining whether or not the Labor Management Act furnishes the exclusive remedy for its enforcement. It does fix the status of unfair labor practices to the exclusion of state laws in respect to commerce.

The situation we are dealing with is entirely different from that of *Amalgamated Assn.* v. *Wisconsin, supra*, in that, here we have no State statute setting up an employment relations board and giving it the power to enforce a labor relations law of the State, wherein such board may prescribe policies inconsistent with the national board. We have here a federal law defining unfair labor practices in commerce, which takes precedence over any state law in that respect. Our case is also different from that one in that here an employer is seeking to obtain, through the traditional jurisdiction of a court of equity, a right which the Labor Management Act has conferred upon him. We think the sole and only question is whether or not the Labor Management Act shows a clear purpose to exclude such traditional remedy afforded by the equity courts of the State to prevent irreparable injury when the flow of commerce is not impeded. So that the question is pertinent whether there can exist at the same time under applicable law, the right to an injunction under circumstances here involved, at the suit of a board for the benefit of the employer at his instance, such suit to be in the United States District Court, and at the same time the right of such employer to elect to pursue his equitable remedy for an injunction, which the equity courts of the State provide for him.

The principle is well settled that more than one remedy may be available for the redress of a given wrong. That is not in conflict with the principle that there can exist but

one law defining the status and rights of the parties in a given situation. When that status is fixed by law, as it is here fixed by the Labor Management Act, there may be, consistent with constitutional power, two remedies open for the enforcement of that right. Either of such remedies may be pursued in such situation.

Appellee cites the case of *Hughes* v. *Superior Court of California*, 339 U. S. 460, 70 S. Ct. 718. In that case it was "held that the Fourteenth Amendment did not bar a state from use of injunction to prohibit picketing of a store solely [fol. 67] in order to secure compliance with demand that store's employees be in proportion to racial origin of its then customers."

Appellee also cites the case of *International Brotherhood v. Hanke*, 339 U. S. 470, 70 S. Ct. 773, involving the same legal status as did the *Hughes case, supra*. The same conclusion was reached.

It is said in the case of *Pocahontas Terminal Cor. v. Portland Building and Construction Co.*, 93 Fed. Supp. 217, that the picketing described in the two latter cases, *supra*, might violate the unfair labor practice of the Taft Hartley Act had that been applicable. But that the facts in both cases indicate controversies of a local nature only, not affecting the flow of interstate commerce, in contrast with the controversy then before the court.

In *Interstate Union v. O'Brien*, 336 U. S. 454, 70 S. Ct. 781, a suit for an injunction was brought by a labor union to enjoin enforcement of a state law. There was a strike by the union without conforming to state law procedure, but it was conducted peacefully. The union contended that the state law violated the commerce clause of the Federal Constitution. The Supreme Court of the United States applied the Labor Management Act of 1947, saying that Congress safeguarded the exercise by employees of such activities and recognized the right to strike. It qualified and regulated that right and fixed certain prerequisites. It was held that the provisions of section 8 (b) (4) should not be read as permitting concurrent state regulation of peaceful strikes, but that Congress occupied this field and had closed it to state regulation. The opinion recognized the power of state legislation in this area but held that the

particular status could not stand since it conflicted with the federal act. The Supreme Court of Michigan had reversed a decree of the lower court enjoining the proceedings and certiorari was then brought by the union to the United States Supreme Court. No question of jurisdiction in the state court was considered. The extent to which a state may legislate in respect to unfair labor practices, defined by the Labor Management Act, was held to depend entirely upon whether it conflicts with federal law on the subject and is within the powers otherwise existing.

The term "affecting commerce" is defined in section 2 (7) of the Labor Management Act as "in commerce, or burdening or obstructing commerce, or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of com-
[fol. 68] merce."

The power given the board by section 10 (a) to prevent any person from engaging in any unfair labor practice (listed in section 8, *supra*) is that affecting commerce. Although the labor practices here involved may violate the provisions of the Labor Management Act, we do not think Congress intended to deprive a state court of the power to protect a person against unlawful picketing of a local nature only, not affecting the flow of interstate commerce, but causing irreparable damage, and when the administrative remedy is inadequate. The cases of *Teamsters Union v. Hanke*, 339 U. S. 470, 70 S. Ct. 773; *Building Service Employees Union v. Gazzam*, 339 U. S. 532, 70 S. Ct. 784 and *Giboney v. Empire Storage and Ice Co.*, 336 U. S. 490, 69 S. Ct. 684, have no relation to commerce, but only to the First and Fourteenth Amendments.

We will not undertake to discuss a principle applicable when the picketing is for an unlawful purpose, not conducted in an unlawful manner, but impedes the flow of interstate commerce, or when the administrative remedy is adequate. It may well be that under such circumstances Congress intended to confine the procedure to an interstate tribunal set up by it.

However, such is not this case. We think the procedure here pursued is a means of prevention, otherwise established by law under the terms of section 10 (a), *supra*.

It therefore follows that the decree of the lower court is affirmed.

Affirmed.

Livingston, C. J., Brown, Lawson, Simpson, and Stakely, JJ., concur.

IN SUPREME COURT OF ALABAMA

OPINION ON REHEARING

FOSTER, Justice:

We do not understand that appellant in his argument on application for rehearing controverts the statement in our opinion that the bill alleges facts which show the union appellant was engaged in an unfair labor practice under the Labor Management Relations Act of 1947, section 8 (b), (4), (A). It was not otherwise contended in oral argument on the submission. Appellant now observes that the several recent decisions of the United States Supreme Court cited [fol. 69] in brief were not before us when our opinion was written. *National Labor Relations Board v. Denver Building and Construction Trades Council*, 71 S. Ct. 943, 95 L. Ed. 782; *International Brotherhood of Electrical Workers v. National Labor Relations Board*, 71 S. Ct. 954, 95 L. Ed. 793; *National Labor Relations Board v. International Rice Milling Co.*, 71 S. Ct. 961, 95 L. Ed. 777; *Local 74, United Brotherhood of Carpenters and Joiners of Am., A. F. of L. v. National Labor Relations Board*, 71 S. Ct. 966, 95 L. Ed. 800.

Those cases were decided a few days before this case. They or one of them was called to our attention. They support the theory, not controverted in this case, that the bill shows an unfair labor practice under the Labor Management Relations Act, *supra*. They also show that in order to redress that wrong a complaint was filed with the board. In some of the cases the board had a hearing and made a cease and desist order. The proceedings were to review and enforce those orders. They were upheld. The principal question controverted and settled was whether there was an unfair labor practice by the union under section 8 (b), (4), (A).

In one of the cases (*National Labor Relations Board v. International Rice Milling Co., supra*), the board dismissed the complaint because it was not such an unfair labor practice. The court sustained that ruling. It is not contended that this last case is here controlling because it applies to a different situation. In the other cases the board took jurisdiction and made a final cease and desist order. It does not appear that a preliminary injunction had been issued (as provided in section 10 [1]). But the proceeding was before the Circuit Court of Appeals to enforce the board's order as provided in section 10 (e).—Section 160 of Title 29 (Pocket Part) U. S. C. A.

Those three latter cases only show that a remedy before the board was applied to make a final order of cease and desist. There was of course nothing new or controversial about that.

The only question we have in this case is whether the State court has jurisdiction when special circumstances of irreparable injury are alleged and not controverted, augmented by the necessary time of the board in making the preliminary investigation, and subject to a possibility that the board will not take jurisdiction on account of the small amount of influence the transaction has on the flow of interstate commerce. This being in the discretion of the board, it was not necessary for complainant to take that risk in a [fol. 70] situation which was then holding up construction and causing irreparable damage.—*National Labor Relations Board v. Denver Building and Construction Trades Council, supra* (4), pages 949, 950. See, also, for current practice in that respect, "Release of National Labor Relations Board, dated October 6, 1950," under which the board will exercise jurisdiction when any enterprise has a direct inflow of material valued at $500,000.00 a year, or an indirect inflow of material valued at $1,000,000.00 a year.

Considering that release and the urgency of the need for an immediate injunction to prevent irreparable damage, we still think a state court of equity was open to complainant. No other court had jurisdiction. The only other remedy was before the board. We think the authorities support the view that a state court of equity has jurisdiction upon

a showing of extraordinary circumstances or irreparable injury.

The application for rehearing is overruled.

Livingston, C. J., Brown, Lawson, Simpson and Stakely, JJ., concur.

[fol. 71] THE SUPREME COURT OF ALABAMA

3 Div. 600

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, et als.,

vs.

LEDBETTER ERECTION COMPANY, INCORPORATED

DECREE—June 28, 1951

Come the parties by attorneys, and the record and matters therein assigned for errors, being argued and submitted and duly examined and understood by the Court, it is considered that in the record and proceedings of the Circuit Court there is no error.

It is therefore considered, ordered, adjudged, and decreed that the decree of the Circuit Court be in all things affirmed.

It is further considered, ordered, adjudged, and decreed that the appellants, Montgomery Building and Construction Trades Council, International Brotherhood of Electricial Workers Union Local #443, and Carpenter & Joiners Union Local #1796, and J. H. McNeese, Ross Smith, and Monroe Henderson, sureties on the appeal bond, pay the costs of appeal of this Court and of the Circuit Court.

And it appearing that said parties have waived their rights of exemption under the laws of Alabama, let execution issue accordingly.

[fol. 72] [File endorsement omitted]

IN THE SUPREME COURT OF ALABAMA

[Title omitted]

APPLICATION FOR REHEARING—Filed July 10, 1951

Come the appellants in the above styled cause and each of them respectfully move the Court to grant unto them a rehearing in this cause, and they pray that upon the rehearing being granted, the judgment made and entered in this cause on, to-wit: the 28th day of June, 1951, affirming the decree rendered in the Circuit Court in this cause be set aside and held for naught, and in lieu thereof a judgment be rendered reversing said decree rendered by the trial Court in this cause, as, it is respectfully submitted, should have been originally done. In support of the Application for Rehearing, the brief and argument that follow are respectfully submitted.

(S.) J. L. Busby, Earl McBee, Attorneys for Appellants.

[fol. 73] THE SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING 1ST APPLICATION FOR REHEARING—Thursday, January 10, 1952

It is ordered that the application for rehearing filed by the appellants in this cause on July 10th, 1951, after being duly examined and considered by the Court, be and the same is hereby overruled; and the opinion is extended on rehearing per pages 21, 22, and 23.

[fol. 74] [File endorsement omitted]

IN SUPREME COURT OF ALABAMA

[Title omitted]

SECOND APPLICATION FOR REHEARING—Filed January 21, 1952

Come the appellants in the above styled cause and each of them respectfully move the Court to grant unto them a rehearing in this cause, and they pray that upon the rehearing being granted, the judgment made and entered in this cause on, to-wit: the 28th day of June, 1951, affirming the decree rendered in the Circuit Court in this cause be set aside and held for naught, and in lieu thereof a judgment be rendered reversing said decree rendered by the trial Court in this cause, as, it is respectfully submitted, should have been originally done. In support of the Application for Rehearing, the brief and argument that follow are respectfully submitted.

(S.)J. L. Busby, Earl McBee, Attorneys for Appellants.

[fol. 75] IN SUPREME COURT OF ALABAMA

[Title omitted]

ORDER OVERRULING 2ND APPLICATION FOR REHEARING—Thursday, March 6, 1952

It is ordered that the 2nd application for rehearing filed by the appellants in this cause on January 21, 1952, after being duly examined and considered by the Court, be and the same is hereby overruled.

[fol. 76] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 77] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1951

No. 736

MONTGOMERY BUILDING AND CONSTRUCTION TRADES COUNCIL, ET AL., Petitioners,

vs.

LEDBETTER ERECTION COMPANY, INC.

ORDER ALLOWING CERTIORARI—Filed June 2, 1952

The petition herein for a writ of certiorari to the Supreme Court of the State of Alabama is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.